

CHAPTER XV

PUBLIC PROCEEDINGS AND PUBLIC RECORDS

ACCESS TO PUBLIC PROCEEDINGSIndiana Open Door Law

Board meetings are governed by the Open Door Law, IC 5-14-1.5. Under the Open Door Law all meetings of governing boards must be open to the public except for executive sessions.

Executive Sessions. IC 5-14-1.5-6.1(b) lists the circumstances under which an executive session may be held, including the following:

1. Where authorized by federal or state statute.
2. For discussion of strategy for: collective bargaining; initiation of litigation or litigation which is either pending or has been threatened specifically in writing; implementation of security systems; or purchase or lease of real property up to the time a contract or option to purchase or lease is executed by the parties.
3. To receive information about, and interview, prospective employees.
4. With respect to any employee's status or alleged misconduct.
5. For discussion of confidential records.
6. To discuss job performance evaluations of individual employees.

Final action on matters discussed in executive session must be taken at a meeting open to the public. Minutes of executive sessions must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given. The board must certify by a statement in its memoranda and minutes that it discussed no subject matter in the executive session other than the subject matter specified in the public notice. [IC 5-14-1.5-6.1]

Public Notice

Public notice of the date, time, and place of regular meetings, executive sessions, or rescheduled or reconvened meetings must be given at least 48 hours before the meeting (excluding Saturdays, Sundays, and legal holidays). Reconvened meetings may be held with less than 48 hours notice if the new date, time, and place is announced at the time of the original meeting and recorded in the minutes, and there is no change in the agenda. Public notice is given by posting a notice of the meeting at the office of the political subdivision and notifying all news media who have filed a written request to receive such notices. If an agenda is used, it should be posted at the entrance to the meeting place. Notice of regular meetings need be given only once each year unless the date, time or place is changed. In case of an emergency, the 48 hour requirement may be disregarded. [IC 5-14-1.5-5]

Minutes

Memoranda (minutes) of the meeting shall include the following items:

1. Date, time, and place of the meeting;
2. Members present and absent;
3. The general substance of all matters proposed, discussed or decided; and
4. A record of all votes taken, by individual members if there is a roll call. The memoranda should be available to the public within a reasonable period of time after the meeting. [IC 5-14-1.5-4]

ACCESS TO PUBLIC RECORDS [IC 5-14-3]

Public Policy

Access to public records is governed by IC 5-14-3. The official policy of the State is: "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Providing persons with the information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." [IC 5-14-3-1]

Definition of Public Record

A public record is defined as any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, used, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material regardless of form or characteristics. [IC 5-14-3-2]

Request for Access to Public Records

Any person may inspect and copy the public records of a public agency during regular business hours. A request for inspection or copying must identify with reasonable particularity the record being requested; and be, at the discretion of the public agency, in writing or on a form provided by the public agency. No request may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute. [IC 5-14-3-3(a)]

The public agency shall either: (a) provide the requested copies to the person making the request; or (b) allow the person to make copies on the political subdivision's equipment or on his own equipment. [IC 5-14-3-3(b)]

The denial of access to a public record is covered in IC 5-14-3-9.

Access to Electronic Data Storage Systems

A public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. [IC 5-14-3-3(d)]

The public agency may adopt an ordinance or resolution prescribing the conditions under which a person who receives information on disk or tape may or may not use the information for commercial purposes, including to sell, advertise, or solicit the purchase of merchandise, goods, or services, or sell, loan, give away, or otherwise deliver the information obtained by the request to any other person for these purposes. Use of this information in connection with the preparation or publication of news, for nonprofit activities, or for academic research is not prohibited. A person who uses information in a manner contrary to the ordinance or resolution may be prohibited by the public agency from obtaining a copy or any further data. [IC 5-14-3-3 (e)]

A public agency may not enter into or renew a contract or an obligation (a) for the storage or copying of public records or (b) that requires the public to obtain a license or pay copyright royalties for obtaining the right to inspect and copy the records unless otherwise provided by applicable statute; if the contract, obligation, license, or copyright unreasonably impairs the right of the public to inspect and copy the agency's public records. [IC 5-14-3-3(f)]

Enhanced Access

As an additional means of inspecting and copying public records, a public agency may provide enhanced access to public records maintained by the public agency. A public agency may provide a person with enhanced access to public records if any of the following apply:

1. The public agency provides enhanced access to the person through its own computer gateway and provides for the protection of public records.
2. The public agency has entered into a contract with a third party under which the public agency provides enhanced access to the person through the third party's computer gateway or otherwise, and the contract between the public agency and the third party provides for the protection of public records.

A contract entered into under this section and any other provision of enhanced access must provide that the third party and the person will not engage in the following:

1. Unauthorized enhanced access to public records.
2. Unauthorized alteration of public records.
3. Disclosure of confidential public records.

A contract entered into under this section or any provision of enhanced access may require the payment of a reasonable fee to either the third party to a contract or to the public agency, or both, from the person.

A public agency may provide enhanced access to public records through the computer gateway administered by the Intelnet Commission established under IC 5-21-2. [IC 5-14-3-3.6]

Records Which May Be Excepted From Disclosure

Pursuant to IC 5-14-3-4(b), the following public records may be excepted from the disclosure requirements if the governing board approves a policy to that effect:

1. Personnel files of employees and files of applicants for employment, except for:
 - a. The name, compensation, job title, business address, business telephone number, job descriptions, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the public agency;
 - b. Information relating to the status of any formal charges against the employee; and
 - c. Information concerning disciplinary actions in which final action has been taken and that resulted in the employee being disciplined or discharged.

However, all personnel file information shall be made available to the affected employee or his representative. General personnel information on all employees or for groups of employees, without individual names, may not be excepted from disclosure.

2. Administrative or technical information that would jeopardize a record keeping or security system.
3. Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.
4. Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1.
5. The identity of a donor of a gift made to a public agency if the donor requires nondisclosure of his identity as a condition of making the gift; or after the gift is made, the donor, or the donor's family, requests nondisclosure.

Names and addresses of employees may not be disclosed by the political subdivision to commercial entities for commercial purposes and may not be used by commercial entities for commercial purposes. [IC 5-14-3-4(c)]

Fees

The governing board shall establish a fee schedule for the certification, copying, or facsimile machine transmission of documents. The fee may not exceed the actual cost of certifying, copying, or facsimile transmission of the document by the agency and the fee must be uniform throughout the public agency and uniform to all purchasers. "Actual Cost" means the cost of paper and the per-page cost for use of copying or facsimile equipment, and does not include labor costs or overhead costs. [IC 5-14-3-8(d)]

PRESERVATION AND DESTRUCTION OF PUBLIC RECORDS

Policy

The governing board is charged with the duty to preserve, keep, maintain, or file all the official records of the political subdivision pursuant to IC 5-15-1-1. The final decision as to the destruction or disposition of such records rests with the local public records commission. A local public records commission is established in each county pursuant to IC 5-15-6-1.

IC 5-15-6-3(f) concerning destruction of public records, states in part: "Original records may be disposed of only with the approval of the commission according to guidelines established by the commission."

Definition of Public Record

A public record is defined as all documentation of the informational, communicative or decision-making processes of the political subdivision in connection with the transaction of public business or governmental functions, which documentation is created, received, retained, maintained, or filed by the political subdivision as evidence of its activities or because of the information value of the data in the documentation, and which is generated on paper or paper substitutes; photographic or chemically based media; magnetic or machine readable media; or any other materials, regardless of form or characteristics. [IC 5-15-5.1-1]

For purposes of IC 5-15-6, the terms "public record" or "record" refers to local government documentation. [IC 5-15-6-1.5]

County Public Records Commission

IC 5-15-6-1 creates in each county a commission known as the "County Commission of Public Records of _____ County." IC 5-15-6-2 sets out the duties and responsibilities of the commission. It is the duty of the commission to determine the following:

1. Which public records, if any, are no longer of official or historical value.
2. Which public records are of current official value and should be retained in the office where they are required to be filed.
3. Which public records are of official value but are consulted and used so infrequently that they are no longer of appreciable value to the officer with whom they are required to be filed.
4. Which public records are of no apparent official value, but which do have historical value.
5. Adopt and implement retention schedules for use by local governmental officials as part of a records management program for local government public records at the first meeting of the county commission after the commission receives a retention schedule for the local government approved by the oversight committee on public records as established by IC 5-15-5.1-18.

The following officers make up the commission:

1. Judge of the Circuit Court (Ex Officio);
2. President of the Board of County Commissioners;

3. County Auditor;
4. Clerk of the Circuit Court (Secretary);
5. County Recorder;
6. Superintendent of Schools of the school district in which county seat city is located.
7. City Controller or Clerk-Treasurer of the county seat city or town.

Suggested Procedures

As a starting point for disposing of old records, an inventory of the office and the storerooms should be taken. The inventory should list the type of record and the year such record was made.

After the inventory is completed and a decision is made as to the records to be destroyed, a request and approval for destruction of records should be submitted to the County Commission of Public Records of the county in which the public agency is located.

A pamphlet entitled "Guide for Preservation and Destruction of Local Public Records" published by the State Commission on Public Records will be furnished to any official upon request. You should carefully review this publication and comply with the instructions therein when considering the destruction of any records.

The State Commission has furnished each Clerk of the Circuit Court, who serves as secretary of the County Commission of Public Records, a supply of this publication and a supply of Form PR1 entitled "Request for Permission to Destroy and Transfer Certain Public Records" to be used by local officials in submitting requests to the County Commissions.

Removal of Records - Time Restriction

IC 5-15-6-3 concerning the removal and destruction of records states:

- a. As used in this section, "original records" includes the optical image of a check or deposit document when:
 1. The check or deposit document is recorded, copied, or reproduced by an optical imaging process described in subsection (e); and
 2. The drawer of the check receives an optical image of the check after the check is processed for payment or the depositor receives an optical image of the deposit document after the document has been processed for the deposit.
- b. All public records which, in the judgment of the commission, have no official or historical value, and which occupy space to no purpose in the offices and storerooms of the local government of a county, shall be destroyed or otherwise disposed of. Except as provided in this section, such records shall not be destroyed until a period of at least three (3) years shall have elapsed from the time when the records were originally filed, and no public records shall be destroyed within a period of three (3) years if the law provides that they shall be kept for a longer period of time, or if the law prohibits their destruction.

- c. Subject to this section, records may be destroyed before three (3) years elapse after the date when the records were originally filed if the destruction is according to an approved retention schedule.
- d. No financial records or records relating thereto shall be destroyed until the earlier of the following actions:
 - 1. The audit of the records by the State Board of Accounts has been completed, report filed, and any exceptions set out in the report satisfied.
 - 2. The financial record or records have been copied or reproduced as described in subsection (e).
- e. As used in this section, "public records" or "records" includes records that have been recorded, copied, or reproduced by a photographic, photostatic, miniature photographic, or optical imaging process that correctly, accurately, and permanently copies, reproduces, or forms a medium for copying or reproducing the original record on a film or other durable material. Original records may be disposed of in accordance with subsection (f), if the record has been copied or reproduced as described in this subsection. The copy must be treated as an original. Copies, recreations, or reproductions made from an optical image of a public record described in this subsection shall be received as evidence in any court in which the original record could have been introduced, if the recreations, copies, or reproductions are properly certified as to authenticity and accuracy by an official custodian of the records.
- f. Original records may be disposed of only with the approval of the commission according to guidelines established by the commission. However, the guidelines established by the commission concerning the disposal of financial records must be approved by the State Board of Accounts before the guidelines become effective.

The decision as to the disposition or destruction of any record rests entirely upon the commission; however, there are certain records which appear to be sufficient value to require that they be retained permanently, and there are other records which should not be disposed of for a period of longer than three years, due to limitations imposed under other statutes. Among these records are:

Retained Permanently

All minutes due to their historical value and their value in determining titles of property, appointments, etc.

Ledgers of Receipts and Disbursements as permanent financial records.

Bond Records, as evidence of indebtedness and payment.

Retained for Longer Periods Than Three (3) Years

All contracts, claims and paid warrants for minimum of six (6) years due to statute of limitations in civil actions. [IC 34-1-2-1 and IC 34-1-2-2]

Public Records Retention - Audit

IC 5-15-6-3(f) concerning destruction of public records, states in part: "Original records may be disposed of only with the approval of the commission according to guidelines established by the commission."

Supporting documentation such as receipts, canceled checks, tickets, invoices, bills, contracts, and other public records must be available for audit to provide supporting information for the validity and accountability of monies disbursed. Payments without supporting documentation may be the personal obligation of the responsible official or employee.

Order to Destroy Public Records

A copy of any order to destroy public records shall be delivered to the State Archivist, Indiana State Library, any active genealogical society of the county and any active historical society of the county not later than sixty days before the destruction date accompanied by a written statement that they may procure such records at their own expense subject to the provisions enumerated in the law. [IC 5-15-6-7]

Penalty

A public official or other person who recklessly, knowingly, or intentionally destroys or damages any public record commits a Class D felony unless:

1. The commission shall have given its approval in writing that public records may be destroyed;
2. The commission shall have entered its approval for destruction of the public records on its own minutes; or
3. Authority for destruction of the records is granted by an approved retention schedule. [IC 5-15-6-8]

Public Records Go With the Office

Sometimes it is reported that when an official is replaced by reason of death, resignation, appointment, or election, the records are being withheld from the successor until they are audited.

When an official assumes custody of an office many of the forms and records are continuous. Each official's acts are a matter of record. An official is not responsible for the acts of his successor and a successor is not responsible for the acts of his predecessor.

Regardless of the capacity served by an official, upon completion of his service, all records and forms are to be surrendered to his successor.

Supporting documentation such as receipts, canceled checks, tickets, invoices, bills, contracts, and other public records must be available for audit to provide supporting information for the validity and accountability of monies disbursed. Payments without supporting documentation may be the personal obligation of the responsible official or employee.

Transaction Recording

All financial transactions pertaining to the governmental unit should be recorded in the records of the governmental unit.

Timely Recordkeeping

All documents and entries to records should be done in a timely manner to ensure that accurate financial information is available to allow the governmental unit to make informed management decisions and to help ensure compliance with IC 5-15-1-1 et seq., commonly referred to as the Public Records Law.